



April 30, 1999

Mr. Juan Cruz  
Escamilla & Poneck, Inc.  
1200 South Texas Building  
603 Navarro Street  
San Antonio, Texas 78205-1826

OR99-1195

Dear Mr. Cruz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123777.

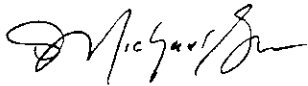
The San Antonio Independent School District (the "SAISD"), which you represent, received a request for information related to "Level II" decisions made by Assistant Superintendent Nick Garza in the 1997-1998 and 1998-1999 school years. You have provided the responsive information for our review. You contend that this information is excepted from disclosure by sections 552.101 and 552.102 of the Government Code in conjunction with common law rights of privacy. You also raise section 21.355 of the Education Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides, "[a] document evaluating the performance of a teacher or administrator is confidential." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). This office has also concluded that, for purposes of section 21.355, a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* The information submitted consists of the decisions made in response to grievances made by SAISD employees. It does not involve the evaluation of the performance of a teacher or administrator. We conclude that none of the responsive information is made confidential by section 21.355 of the Education Code.

Section 552.101 also encompasses information made confidential by court decision. The courts have held that information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 552.102 protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that afforded under section 552.101 for common-law right of privacy. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). The submitted information all deals with employees' and former employees' actions as public servants, and as such it is a matter of legitimate public interest. *See* Open Records No. 444 (1986). Moreover, the fact that the Board of Trustees may hear Level III complaints in executive sessions does not make such complaints confidential under the Public Information Act. *See* Open Records Decision No. 485 at 9-10 (1987). We conclude that the responsive information may not be withheld under section 552.101 or 552.102 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 123777

encl. Submitted documents

cc: Mr. Tony Connors  
Brim, Arnett & Robinett, P.C.  
2525 Wallingford Drive, Building 14  
Austin, Texas 78746  
(w/o enclosures)